

# HOUSE BILL No. 1408

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-20-1-27; IC 23-2-5-20; IC 24-4.4-2; IC 24-4.5; IC 24-9; IC 25-34.1-8-7.5; IC 32-29-7-3.

**Synopsis:** Mortgage lending practices. Prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan without first making a good faith inquiry into the borrower's ability to repay the loan at the loan's full monthly cost. Prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan that is a stated income or no documentation loan. Provides that in the case of a residential mortgage loan that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty. Requires the department of financial institutions (department) to adopt rules to: (1) establish a duty of care owed by mortgage servicers to debtors in first lien mortgage transactions in Indiana; and (2) require mortgage servicers that service first lien mortgage transactions in Indiana to report annually to the department and to the Indiana housing and community development authority (authority) certain information about the servicers' outstanding loans in Indiana. Provides that if the total amount in the investigative fund administered by the attorney general and the professional licensing agency to investigate real estate and real estate appraisal fraud exceeds \$750,000 at the end of a state fiscal year: (1) 50% of the amount exceeding \$750,000 remains in the fund; and (2) 50% of the amount exceeding \$750,000 shall be deposited in the home ownership education account administered by the authority. (Current law provides that any amount remaining in the fund at the end of a state fiscal year that exceeds \$750,000 reverts to the state general fund.)

(Continued next page)

**Effective:** Upon passage; July 1, 2009.

**Reske**

January 13, 2009, read first time and referred to Committee on Financial Institutions.



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Extends the period in a residential mortgage foreclosure proceeding during which process may not issue for the execution of a judgment or decree of sale from three months to 120 days after the filing of the complaint. Establishes the home ownership preservation task force that consists of: (1) the director of the department; (2) the executive director of the authority; and (3) 13 voting members appointed by the governor. Provides that the director of the department and the executive director of the authority serve as co-chairs and nonvoting members of the task force. Requires the task force to conduct at least five meetings before November 15, 2009, and to do the following: (1) Identify new sources of federal funding that can be used to assist Indiana homeowners or communities that are affected by residential mortgage loan foreclosures. (2) Identify any other new or existing sources of federal, state, or private funding that can be used for, or redirected to, those purposes. (3) Identify methods and sources of available funding to promote the authority's mortgage foreclosure counseling and education program. (4) Make recommendations for any state legislation, rules, or programs that the task force determines are necessary to assist Indiana homeowners or communities that are affected by residential mortgage loan foreclosures. Requires the task force to submit a report to: (1) the legislative council; and (2) the members of the legislative standing committees that have jurisdiction over legislation concerning financial institutions. Establishes the pro bono foreclosure assistance task force that consists of: (1) the chief justice of the supreme court, or the chief justice's designee, who serves as chair of the task force; (2) the president of the Indiana state bar association, or the president's designee; and (3) 15 members appointed by the chief justice. Requires the task force to determine the feasibility of developing, implementing, administering, and promoting a statewide program to provide pro bono legal assistance to Indiana home owners involved in foreclosure proceedings filed in Indiana courts. Requires the task force to report its findings and recommendations to: (1) the legislative council; and (2) the members of the legislative standing committees that have jurisdiction over legislation concerning financial institutions.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1408

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,  
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 27. (a) The home ownership education account  
4 within the state general fund is established to support the home  
5 ownership education programs established under section 4(d) of this  
6 chapter. The account is administered by the authority.  
7 (b) The home ownership education account consists of:  
8 (1) ~~fees collected under IC 24-9-9;~~ **any amounts deposited in the**  
9 **account under IC 25-34.1-8-7.5(d);** and  
10 (2) civil penalties imposed and collected under:  
11 (A) IC 6-1.1-12-43(g)(2)(B); or  
12 (B) IC 27-7-3-15.5(e).  
13 (c) The expenses of administering the home ownership education  
14 account shall be paid from money in the account.  
15 (d) The treasurer of state shall invest the money in the home



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ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 2. IC 23-2-5-20, AS AMENDED BY P.L.145-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. (a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or refinancing of an existing home loan, means the factors likely to affect a borrower's ability to repay the home loan at the loan's full monthly cost, including the following:

(1) The borrower's present and future:

(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(B) expenses;

(C) assets; and

(D) liabilities.

(2) The borrower's credit history.

(3) Any other factor likely to affect the borrower's ability to repay the home loan at the home loan's full monthly cost.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to a home loan, means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying at any time during the term of the home loan:

(1) Principal plus interest at the loan's fully indexed rate.

(2) Property taxes.

(3) Homeowners insurance premiums.

(4) Private mortgage insurance premiums.

(5) Premiums for:

(A) credit life insurance;

(B) credit disability insurance;

(C) credit unemployment insurance; or

(D) other consumer credit insurance;

that the borrower has agreed to pay.

(6) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(7) Any other monthly costs that the borrower will be

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1 responsible for paying at any time during the term of the  
2 home loan.

3 (d) As used in this section, "fully indexed rate", with respect to  
4 a home loan, means:

5 (1) for a fixed rate home loan in which the interest rate will  
6 not vary during the term of the loan, the rate as of the date of  
7 closing;

8 (2) for a home loan in which the interest varies according to  
9 an index, the sum of the index rate as of the date of closing  
10 plus the maximum margin permitted at any time under the  
11 loan agreement; or

12 (3) for all other home loans in which the rate may vary at any  
13 time during the term of the loan, the maximum rate that may  
14 be charged during the term of the loan.

15 (e) For purposes of this section, a person makes a "good faith  
16 inquiry" into a borrower's ability to repay a home loan if the  
17 person obtains:

18 (1) a consumer report (as defined in IC 24-5-24-2) or other  
19 information maintained by a consumer reporting agency (as  
20 defined in IC 24-5-24-3) with respect to the borrower; and

21 (2) other relevant information about the borrower's present  
22 and future income, expenses, assets, and liabilities through:

23 (A) a current or past employer of the borrower;

24 (B) public records; or

25 (C) any other legal and commercially reasonable means.

26 (f) As used in this section, "home loan" has the meaning set  
27 forth in IC 24-9-2-9.

28 (g) As used in this section, "stated income or no documentation  
29 home loan" means a home loan with respect to which a creditor:

30 (1) relies solely on a prospective borrower's written or oral  
31 statement of the prospective borrower's creditworthiness; and

32 (2) does not independently verify the accuracy of the  
33 prospective borrower's statement by conducting a reasonable  
34 inquiry into the prospective borrower's creditworthiness;

35 in making an underwriting determination with respect to the  
36 prospective borrower.

37 ~~(a)~~ (h) A person shall not, in connection with a contract for the  
38 services of a loan broker, either directly or indirectly, do any of the  
39 following:

40 (1) Employ any device, scheme, or artifice to defraud.

41 (2) Make any untrue statements of a material fact or omit to state  
42 a material fact necessary in order to make the statements made, in

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the light of circumstances under which they are made, not misleading.

(3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.

(5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.

(6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

(i) a misstatement; or

(ii) an untrue statement;

of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

(A) The personal information is:

(i) included on an application form or another form; or

(ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

**(9) Recommend a home loan to, or procure a home loan on**

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behalf of, a borrower without first making a good faith inquiry into the borrower's ability to repay the loan. A person that conducts a good faith inquiry into a borrower's ability to repay a home loan is not liable to:

(A) the borrower;

(B) a subsequent purchaser of the property that is the subject of the loan; or

(C) any other person;

if the borrower later defaults on the home loan that the person has recommended to, or procured on behalf of, the borrower.

**(10) Recommend to, or procure on behalf of, a borrower a stated income or no documentation home loan.**

~~(b)~~ (i) A person who commits an act described in subsection ~~(a)~~ (h) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 3. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

**(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that is closed after June 30, 2009. A creditor in a transaction to which this subsection applies may not contract for**

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**and may not charge the debtor a prepayment fee or penalty.**

~~(2)~~ **(3)** This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 4. IC 24-4.4-2-201.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 201.5. (1) As used in this section, "ability to repay", with respect to a first lien mortgage transaction, including the consolidation or refinancing of an existing first lien mortgage transaction, means the factors likely to affect a debtor's ability to repay the first lien mortgage transaction at the first lien mortgage transaction's full monthly cost, including the following:**

**(a) The debtor's present and future:**

- (i) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;**
- (ii) expenses;**
- (iii) assets; and**
- (iv) liabilities.**

**(b) The debtor's credit history.**

**(c) Any other factor likely to affect the debtor's ability to repay the first lien mortgage transaction at the first lien mortgage transaction's full monthly cost.**

**(2) As used in this section, "debtor" includes a prospective**

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debtor, where appropriate.

(3) As used in this section, "full monthly cost", with respect to a first lien mortgage transaction, means the maximum monthly payment that the debtor will be required to pay with respect to the first lien mortgage transaction, calculated as the total of the following monthly costs that the debtor will be responsible for paying at any time during the term of the first lien mortgage transaction:

(a) Principal plus interest at the first lien mortgage transaction's fully indexed rate.

(b) Property taxes.

(c) Homeowners insurance premiums.

(d) Private mortgage insurance premiums.

(e) Premiums for:

(i) credit life insurance;

(ii) credit disability insurance;

(iii) credit unemployment insurance; or

(iv) other consumer credit insurance;

that the debtor has agreed to pay.

(f) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(g) Any other monthly costs that the debtor will be responsible for paying at any time during the term of the first lien mortgage transaction.

(4) As used in this section, "fully indexed rate", with respect to a first lien mortgage transaction, means:

(a) for a fixed rate first lien mortgage transaction in which the interest rate will not vary during the term of the first lien mortgage transaction, the rate as of the date of closing;

(b) for a first lien mortgage transaction in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or

(c) for all other first lien mortgage transactions in which the rate may vary at any time during the term of the first lien mortgage transaction, the maximum rate that may be charged during the term of the first lien mortgage transaction.

(5) For purposes of this section, a creditor makes a "good faith inquiry" into a debtor's ability to repay a first lien mortgage transaction if the creditor obtains:

(a) a consumer report (as defined in IC 24-5-24-2) or other

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information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the debtor; and

(b) other relevant information about the debtor's present and future income, expenses, assets, and liabilities through:

(i) a current or past employer of the debtor;

(ii) public records; or

(iii) any other legal and commercially reasonable means.

(6) As used in this section, "stated income or no documentation first lien mortgage transaction" means a first lien mortgage transaction with respect to which a creditor:

(a) relies solely on a prospective debtor's written or oral statement of the prospective debtor's creditworthiness; and

(b) does not independently verify the accuracy of the prospective debtor's statement by conducting a reasonable inquiry into the prospective debtor's creditworthiness;

in making an underwriting determination with respect to the prospective debtor.

(7) A creditor may not recommend or issue a first lien mortgage transaction to a debtor without first making a good faith inquiry into the debtor's ability to repay the first lien mortgage transaction. A creditor that conducts a good faith inquiry into a debtor's ability to repay a first lien mortgage transaction is not liable to:

(a) the debtor;

(b) a subsequent purchaser of the property that is the subject of the first lien mortgage transaction; or

(c) any other person;

if the debtor later defaults on the first lien mortgage transaction that the creditor has recommended or issued to the debtor.

(8) After June 30, 2009, a creditor may not recommend or issue to a debtor a stated income or no documentation first lien mortgage transaction.

SECTION 5. IC 24-4.4-2-503 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 503. (a) As used in this section, "mortgage servicer" means the last person to whom a debtor or the debtor's successor in interest has been instructed to send payments on a first lien mortgage transaction.

(b) Not later than July 1, 2010, the commission shall adopt rules under IC 4-22-2 to do the following:

(1) Establish a duty of care owed by mortgage servicers to debtors in first lien mortgage transactions in Indiana. The

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duty of care prescribed by the department may include standards governing any of the following:

(A) Communications between mortgage servicers and debtors.

(B) Participation by mortgage servicers in modifications of first lien mortgage transactions, including any negotiations for the refinancing, restructuring, or workout of existing indebtedness.

(C) Record keeping by mortgage servicers, including the imposition of a duty to maintain a complete transaction history for all first lien mortgage transactions, including a record of the following:

(i) All payments on the first lien mortgage transaction made by or on behalf of the debtor during the life of the first lien mortgage transaction, including the amount of each payment and the date the payment was received by the mortgage servicer.

(ii) All fees, penalties, or other charges imposed by the mortgage servicer or the creditor during the life of the mortgage, including the amount and purpose of the fee, penalty, or other charge and the date and amount of payment, if any, made by the debtor to satisfy the fee, penalty, or other charge.

(D) Any other standards the department determines are necessary to ensure that mortgage servicers conduct business honestly, transparently, and fairly with debtors in Indiana.

In establishing the duty of care required by this subdivision, the department may consult with the appropriate regulatory authorities in other states or jurisdictions that impose similar duties of care on mortgage servicers.

(2) Require mortgage servicers that service first lien mortgage transactions in Indiana to report annually to the department and to the Indiana housing and community development authority the following information with respect to the immediately preceding calendar year:

(A) The number of outstanding first lien mortgage transactions in Indiana that are serviced by the mortgage servicer.

(B) The number of first lien mortgage transactions identified under clause (A) in which the creditor, or the mortgage servicer on behalf of the creditor, participated in

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negotiations with the debtor for the modification of the first lien mortgage transaction, including any negotiations for the refinancing, restructuring, or workout of existing indebtedness.

(C) The results of any negotiations identified under clause (B).

(D) The number of first lien mortgage transactions identified under clause (A) in which a foreclosure action has been initiated.

(E) Any other information the department determines is necessary to obtain information on the status of first lien mortgage transactions in Indiana to allow the state to appropriately direct its resources to assist Indiana homeowners and communities that are affected by the foreclosure or potential foreclosure of first lien mortgage transactions.

SECTION 6. IC 24-4.5-2-209, AS AMENDED BY P.L.145-2008, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 209. ~~Right to Prepay~~ = (1) As used in this section, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

~~(1)~~ (2) Subject to the provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty. **In the case of a mortgage transaction, or the refinancing or consolidation of a mortgage transaction, that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty.**

~~(2)~~ (3) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (IC 24-4.5-2-210), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

~~(3)~~ (4) The creditor or mortgage servicer shall provide an accurate payoff of the consumer credit sale to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

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(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

~~(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.~~

(5) This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12

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U.S.C. 2605(f) in any action brought under that section.

SECTION 7. IC 24-4.5-3-209, AS AMENDED BY P.L.145-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 209. ~~Right to Prepay =~~ **(1) As used in this section, "mortgage transaction" means a consumer credit loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**

~~(1)~~ **(2)** Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that **is closed before July 1, 2009, and that** is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date.

**In the case of a mortgage transaction, or the refinancing or consolidation of a mortgage transaction, that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty.**

~~(2)~~ **(3)** At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

- (a) The loan origination fee allowed under IC 24-4.5-3-201.
- (b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

~~(3)~~ **(4)** The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days

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1 after the creditor or mortgage servicer receives the debtor's written  
 2 request for the accurate consumer loan payoff amount. A creditor or  
 3 mortgage servicer who fails to provide the accurate consumer loan  
 4 payoff amount is liable for:

- 5 (a) one hundred dollars (\$100) if an accurate consumer loan  
 6 payoff amount is not provided by the creditor or mortgage  
 7 servicer within ten (10) calendar days after the creditor or  
 8 mortgage servicer receives the debtor's first written request; and  
 9 (b) the greater of:

- 10 (i) one hundred dollars (\$100); or  
 11 (ii) the loan finance charge that accrues on the loan from the  
 12 date the creditor or mortgage servicer receives the first written  
 13 request until the date on which the accurate consumer loan  
 14 payoff amount is provided;

15 if an accurate consumer loan payoff amount is not provided by the  
 16 creditor or mortgage servicer within ten (10) calendar days after  
 17 the creditor or mortgage servicer receives the debtor's second  
 18 written request, and the creditor or mortgage servicer failed to  
 19 comply with subdivision (a).

20 A liability under this subsection is an excess charge under  
 21 IC 24-4.5-5-202.

22 ~~(4) As used in this subsection, "mortgage transaction" means a~~  
 23 ~~consumer credit loan in which a mortgage, deed of trust, or a land~~  
 24 ~~contract that constitutes a lien is created or retained against land upon~~  
 25 ~~which there is a dwelling that is or will be used by the debtor primarily~~  
 26 ~~for personal, family, or household purposes.~~

27 (5) This subsection applies to a mortgage transaction with respect  
 28 to which any installment or minimum payment due is delinquent for at  
 29 least sixty (60) days. The creditor, servicer, or the creditor's agent shall  
 30 acknowledge a written offer made in connection with a proposed short  
 31 sale not later than ten (10) business days after the date of the offer if  
 32 the offer complies with the requirements for a qualified written request  
 33 set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's  
 34 agent is required to acknowledge a written offer made in connection  
 35 with a proposed short sale from a third party acting on behalf of the  
 36 debtor only if the debtor has provided written authorization for the  
 37 creditor, servicer, or creditor's agent to do so. Not later than thirty (30)  
 38 business days after receipt of an offer under this subsection, the  
 39 creditor, servicer, or creditor's agent shall respond to the offer with an  
 40 acceptance or a rejection of the offer. As used in this subsection, "short  
 41 sale" means a transaction in which the property that is the subject of a  
 42 mortgage transaction is sold for an amount that is less than the amount

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of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 8. IC 24-9-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the following:

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.

As used in subdivision (2), "compensation" does not include a payment included in subdivision (1).

(b) The term does not include the following:

(1) Bona fide discount points.

(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation, if the terms of the loan do not include:

**(A) a prepayment penalty, in the case of a home loan that is closed after June 30, 2009; or**

**(B) a prepayment penalty that exceeds two percent (2%) of the home loan ~~principle~~, principal, in the case of a home loan that is closed before July 1, 2009.**

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

SECTION 9. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.1. (a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or refinancing of an existing home loan, means the factors likely to affect a borrower's ability to repay the home loan at the home loan's full monthly cost, including the following:**

**(1) The borrower's present and future:**

**(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;**

**(B) expenses;**

**(C) assets; and**

**(D) liabilities.**

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(2) The borrower's credit history.

(3) Any other factor likely to affect the borrower's ability to repay the home loan at the home loan's full monthly cost.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to a home loan means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying at any time during the term of the home loan:

(1) Principal plus interest at the home loan's trigger rate.

(2) Property taxes.

(3) Homeowners insurance premiums.

(4) Private mortgage insurance premiums.

(5) Premiums for:

(A) credit life insurance;

(B) credit disability insurance;

(C) credit unemployment insurance; or

(D) other consumer credit insurance;

that the borrower has agreed to pay.

(6) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(7) Any other monthly costs that the borrower will be responsible for paying at any time during the term of the home loan.

(d) For purposes of this section, a creditor makes a "good faith inquiry" into a borrower's ability to repay a home loan if the creditor obtains:

(1) a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the borrower; and

(2) other relevant information about the borrower's present and future income, expenses, assets, and liabilities through:

(A) a current or past employer of the borrower;

(B) public records; or

(C) any other legal and commercially reasonable means.

(e) As used in this section, "stated income or no documentation home loan" means a home loan with respect to which a creditor:

(1) relies solely on a prospective borrower's written or oral statement of the prospective borrower's creditworthiness; and

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1           (2) does not independently verify the accuracy of the  
 2           prospective borrower's statement by conducting a reasonable  
 3           inquiry into the prospective borrower's creditworthiness;  
 4           in making an underwriting determination with respect to the  
 5           prospective borrower.

6           (f) A creditor may not recommend or issue to, or procure on  
 7           behalf of, a borrower a home loan without first making a good  
 8           faith inquiry into the borrower's ability to repay the home loan. A  
 9           creditor that conducts a good faith inquiry into a borrower's  
 10          ability to repay a home loan is not liable to:

11          (1) the borrower;

12          (2) a subsequent purchaser of the property that is the subject  
 13          of the home loan; or

14          (3) any other person;

15          if the borrower later defaults on the home loan that the creditor  
 16          has recommended or issued to, or procured on behalf of, the  
 17          borrower.

18          (g) A creditor may not recommend or issue to, or procure on  
 19          behalf of, a borrower a stated income or no documentation home  
 20          loan.

21          SECTION 10. IC 24-9-3-6, AS AMENDED BY P.L.145-2008,  
 22          SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23          JULY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for  
 24          informing or transmitting to a person the balance due to pay off a home  
 25          loan or to provide a written release upon prepayment. A creditor must  
 26          provide a payoff balance not later than ten (10) calendar days after the  
 27          request is received by the creditor. For purposes of this subsection,  
 28          "fee" does not include actual charges incurred by a creditor for express  
 29          or priority delivery of home loan documents to the borrower if such  
 30          delivery is requested by the borrower.

31          (b) This subsection applies to a home loan, or the refinancing or  
 32          consolidation of a home loan, that is closed after June 30, 2009. A  
 33          creditor in a transaction to which this subsection applies may not  
 34          contract for and may not charge the debtor a prepayment fee or  
 35          penalty.

36          ~~(b)~~ (c) This subsection applies to a home loan with respect to which  
 37          any installment or minimum payment due is delinquent for at least  
 38          sixty (60) days. The creditor, servicer, or the creditor's agent shall  
 39          acknowledge a written offer made in connection with a proposed short  
 40          sale not later than ten (10) business days after the date of the offer if  
 41          the offer complies with the requirements for a qualified written request  
 42          set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's

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agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 11. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) **For a high cost home loan that is closed before July 1, 2009**, prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) **For a high cost home loan that is closed before July 1, 2009**, a prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

(4) **For a high cost home loan that is closed before July 1, 2009**, a creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser

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or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8."

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

SECTION 12. IC 24-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability, **as required under IC 24-9-3-1.1.**

(b) If a creditor presents evidence that the creditor:

(1) followed commercially reasonable practices in determining the borrower's debt to income ratio; **and**

(2) **made a good faith inquiry into a borrower's ability to repay the home loan under IC 24-9-3-1.1;**

there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. ~~For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.~~

(c) **For purposes of subsection (b)(1),** commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393.

SECTION 13. IC 25-34.1-8-7.5, AS AMENDED BY P.L.57-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against real estate fraud and real estate appraisal fraud. The fund shall be administered by the attorney general and the professional licensing agency.

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(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from a fee imposed upon licensed or certified appraisers and real estate brokers and salespersons under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) ~~Except as otherwise provided in this subsection,~~ Money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the investigative fund exceeds seven hundred fifty thousand dollars (\$750,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds seven hundred fifty thousand dollars (\$750,000) ~~reverts to the state general fund.~~ **shall be directed as follows:**

**(1) Fifty percent (50%) of the amount that exceeds seven hundred fifty thousand dollars (\$750,000) remains in the fund to be used for purposes of the fund.**

**(2) Fifty percent (50%) of the amount that exceeds seven hundred fifty thousand dollars (\$750,000) shall be deposited in the home ownership education account established by IC 5-20-1-27 and administered by the Indiana housing and community development authority.**

(e) Money in the fund is continually appropriated for use by the attorney general and the licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against real estate and appraisal fraud under this article. The attorney general shall receive five dollars (\$5) of each fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5, and the licensing agency shall receive any amount that exceeds five dollars (\$5) of each fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

SECTION 14. IC 32-29-7-3, AS AMENDED BY P.L.100-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; ~~and~~

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

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**(C) one hundred twenty (120) days in a proceeding for the foreclosure of a mortgage in which:**

**(i) the mortgaged real estate is residential real estate; and**

**(ii) the complaint in the foreclosure proceeding is filed after June 30, 2009;**

**regardless of the date the mortgage is executed; and**

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

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(2) to be collected as other costs of the proceeding are collected;  
and

(3) to be deposited in the county general fund for appropriation  
for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale  
at the door of the courthouse of each county in which the real estate is  
located.

(f) If the sheriff is unable to procure the publication of a notice  
within the county, the sheriff may dispense with publication. The  
sheriff shall state that the sheriff was not able to procure the  
publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement,  
for informational purposes only, of the location of each property by  
street address, if any, or other common description of the property other  
than legal description. A misstatement in the informational statement  
under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than  
two hundred dollars (\$200) with respect to a proceeding referred to in  
subsection (b) for actual costs directly attributable to the administration  
of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and  
decree; and

(2) due at the time of filing of the praecipe;  
under subsection (b).

**SECTION 15. [EFFECTIVE UPON PASSAGE] (a) As used in this  
SECTION, "residential mortgage loan" means a loan that is  
secured by a mortgage or deed of trust on real estate in Indiana on  
which there is located or will be located a structure or structures  
that is or will be occupied by a borrower as the borrower's  
principal dwelling (as defined in IC 24-4.4-1-301(5)). The term  
includes a first lien mortgage transaction (as defined in  
IC 24-4.4-1-301(6)).**

**(b) As used in this SECTION, "task force" refers to the home  
ownership preservation task force established by subsection (c).**

**(c) The home ownership preservation task force is established.  
The task force consists of the following members:**

**(1) The director of the department of financial institutions,  
who shall serve as an ex officio, nonvoting member.**

**(2) The executive director of the Indiana housing and  
community development authority, who shall serve as an ex  
officio, nonvoting member.**

**(3) The following fifteen (15) voting members appointed by**

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the governor:

(A) One (1) member who represents supervised financial organizations (as defined in IC 24-4.5-1-301(20)) that regularly engage in Indiana as creditors in residential mortgage loans.

(B) One (1) member who represents creditors licensed under IC 24-4.4 who regularly engage in Indiana as creditors in first lien mortgage transactions (as defined in IC 24-4.4-1-301(6)).

(C) One (1) member who:

(i) is a loan broker licensed under IC 23-2-5; and

(ii) regularly acts as a loan broker in residential mortgage loan transactions in Indiana.

(D) One (1) member who is an attorney who:

(i) is licensed to practice law in Indiana; and

(ii) regularly represents homeowners who are defendants in actions to foreclose residential mortgage loans in Indiana.

(E) One (1) member who is a real estate broker licensed under IC 25-34.1.

(F) The executives of the five (5) municipalities in Indiana with the highest rates of residential mortgage loan foreclosures, as determined by the governor with information made available by the Indiana housing and community development authority.

(G) Three (3) members who are foreclosure prevention counselors who are part of, or have been trained or certified by, the Indiana Foreclosure Prevention Network. In making the appointments under this clause, the governor shall attempt to provide representation to different geographic regions in Indiana.

(H) One (1) member who has professional experience in advertising, media relations, or public relations.

(I) One (1) member who serves on the task force as a homeowner whose residence is located in one (1) of the five (5) municipalities identified under clause (F).

(d) The governor shall appoint the members described in subsection (c)(3) not later than June 1, 2009.

(e) The members described in subsection (c)(1) and (c)(2) shall serve as co-chairs of the task force.

(f) Subject to subsection (g), during the period beginning not earlier than July 1, 2009, and ending not later than November 15,

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2009, the task force shall conduct at least five (5) meetings to do the following:

(1) Identify new sources of federal funding that:

(A) are available as a result of:

- (i) recently adopted federal legislation or regulations; or
- (ii) newly created federal programs; and

(B) can be used to:

- (i) assist Indiana homeowners in refinancing their existing residential mortgage loans;
- (ii) assist Indiana homeowners who are delinquent in their residential mortgage loans and facing the foreclosure of their primary residence;
- (iii) rehabilitate neighborhoods or communities in Indiana that have been adversely or disproportionately affected by residential mortgage loan foreclosures; or
- (iv) otherwise assist Indiana homeowners or communities that are affected by the foreclosure or potential foreclosure of residential mortgage loans.

(2) Identify any other new or existing sources of federal, state, or private funding that can be used for, or redirected to, the purposes set forth in subdivision (1).

(3) Identify methods and sources of available funding to promote or otherwise increase the public's awareness of the mortgage foreclosure counseling and education program established by the Indiana housing and community development authority under IC 5-20-6. The task force shall consider the feasibility of developing and implementing a statewide multimedia campaign to increase awareness of the program's web site and toll free telephone number through any of the following:

(A) Public service announcements on television and radio.

(B) Print ads and postcards mailed to residences in those neighborhoods or communities in Indiana that have been adversely or disproportionately affected by residential mortgage loan foreclosures.

(C) Billboards in those neighborhoods or communities in Indiana that have been adversely or disproportionately affected by residential mortgage loan foreclosures.

(D) Ads inside and on the exterior of public transit vehicles.

(E) Any other medium the task force considers appropriate or cost effective to increase awareness of the program's

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web site and toll free telephone number.

(4) Make recommendations for any state legislation, rules, or programs that the task force determines are necessary to:

(A) ensure that the state and its local communities are aware of and receive all funds available to them under federal, state, or private programs designed to assist homeowners and communities that are affected by the foreclosure or potential foreclosure of residential mortgage loans;

(B) implement, fund, or administer a statewide multimedia campaign to increase awareness of the mortgage foreclosure counseling and education program established by the Indiana housing and community development authority under IC 5-20-6; and

(C) otherwise assist Indiana homeowners or communities that are affected by the foreclosure or potential foreclosure of residential mortgage loans.

(g) With respect to any meeting of the task force, one (1) or more members of the task force may participate in the meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with the member participating by such means. Participation by the means described in this subsection constitutes the person's presence at the meeting.

(h) The affirmative votes of a majority of the voting members appointed to the task force under subsection (c)(3) are required for the task force to take action on any measure, including approval of the report to the legislative council and the legislative standing committees required by subsection (k).

(i) Each member of the task force who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(j) Each member of the task force who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of

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1 administration and approved by the budget agency.

2 (k) Not later than December 1, 2009, the task force shall submit  
3 a report to the legislative council and to the members of the  
4 standing committee, in each house of the general assembly, that has  
5 jurisdiction over legislation concerning financial institutions. The  
6 report required under this subsection must:

7 (1) Identify:

8 (A) any new sources of federal funding described in  
9 subsection (f)(1) and identified by the task force;

10 (B) the persons or governmental units or agencies eligible  
11 to receive the funding;

12 (C) any requirements that must be met to receive the  
13 available funds;

14 (D) any applicable application deadlines or fees; and

15 (E) to the extent applicable and determinable by the task  
16 force, the appropriate state or local governmental agency  
17 or private agency to apply for, or to assist Indiana  
18 homeowners or communities in applying for, the available  
19 funds.

20 (2) Identify:

21 (A) any other new or existing sources of federal, state, or  
22 private funding described in subsection (f)(2) and  
23 identified by the task force;

24 (B) the persons or governmental units or agencies eligible  
25 to receive the funding;

26 (C) any requirements that must be met to receive the  
27 available funds;

28 (D) any applicable application deadlines or fees; and

29 (E) to the extent applicable and determinable by the task  
30 force, the appropriate state or local governmental agency  
31 or private agency to apply for, or to assist Indiana  
32 homeowners or communities in applying for, the available  
33 funds.

34 (3) Identify any recommended methods and sources of  
35 available funding to promote the Indiana housing and  
36 community development authority's mortgage foreclosure  
37 counseling and education program, as determined by the task  
38 force under subsection (f)(3). The report must include an  
39 assessment of the feasibility of developing and implementing  
40 a statewide multimedia campaign to increase awareness of the  
41 program's web site and toll free telephone, including an  
42 assessment of the feasibility and cost effectiveness of making

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1 use each of the media described in subsection (f)(3)(A)  
2 through (f)(3)(D).

3 (4) Include any recommendations for state legislation, rules,  
4 or programs that the task force determines are necessary to  
5 accomplish the objectives set forth in subsection (f)(4).

6 The report to the legislative council required by this subsection  
7 must be in an electronic format under IC 5-14-6.

8 (I) This SECTION expires July 1, 2010.

9 SECTION 16. [EFFECTIVE UPON PASSAGE] (a) As used in this  
10 SECTION, "residential mortgage loan" means a loan that is  
11 secured by a mortgage or deed of trust on real estate in Indiana on  
12 which there is located or will be located a structure or structures  
13 that is or will be occupied by a borrower as the borrower's  
14 principal dwelling (as defined in IC 24-4.4-1-301(5)). The term  
15 includes a first lien mortgage transaction (as defined in  
16 IC 24-4.4-1-301(6)).

17 (b) As used in this SECTION, "task force" refers to the pro  
18 bono foreclosure assistance task force established by subsection (c).

19 (c) The pro bono foreclosure assistance task force is established.  
20 The task force consists of the following members:

21 (1) The chief justice of the supreme court of Indiana, or the  
22 chief justice's designee, who shall serve as the chair of the task  
23 force.

24 (2) The president of the Indiana State Bar Association, or the  
25 president's designee.

26 (3) The following fifteen (15) members appointed by the chief  
27 justice of the supreme court of Indiana:

28 (A) The presidents of the local bar associations in the five  
29 (5) municipalities in Indiana with the highest rates of  
30 residential mortgage loan foreclosures, as determined by  
31 the chief justice with information made available by the  
32 Indiana housing and community development authority.

33 (B) Five (5) circuit or superior court judges. In making the  
34 appointments under this clause, the chief justice shall  
35 attempt to provide representation to different geographic  
36 regions in Indiana.

37 (C) One (1) member who is an attorney and:

38 (i) is licensed to practice law in Indiana; and

39 (ii) regularly represents homeowners who are defendants  
40 in actions to foreclose residential mortgage loans in  
41 Indiana.

42 (D) One (1) member who is an attorney and:

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- (i) is licensed to practice law in Indiana; and
- (ii) regularly represents creditors who are plaintiffs in actions to foreclose residential mortgage loans in Indiana.

(E) Upon the recommendation of the executive director of the Indiana housing and community development authority, three (3) members who are foreclosure prevention counselors and are part of, or have been trained or certified by, the Indiana Foreclosure Prevention Network. In making the appointments under this clause, the chief justice shall attempt to provide representation to different geographic regions in Indiana.

(d) The chief justice shall appoint the members described in subsection (c)(3) not later than June 1, 2009.

(e) Subject to subsection (f), the task force shall meet at the call of the chair to do the following:

(1) Determine the feasibility of developing, implementing, and administering a statewide program to provide pro bono legal assistance to Indiana homeowners involved in legal proceedings filed in Indiana courts to foreclose upon the homeowners' residential mortgage loans.

(2) Identify any potential federal, state, or private sources of funding to establish, implement, administer, and promote the program.

(3) Identify potential partnerships with:

- (A) state and local bar associations;
- (B) state and local legal clinics and agencies; and
- (C) law schools;

to provide volunteer attorneys and training assistance for the program.

(4) Make recommendations concerning any legislation that the task force determines is necessary to establish, implement, administer, promote, and fund the program described in subdivision (1).

(f) With respect to any meeting of the task force, one (1) or more members of the task force may participate in the meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with the member participating by such means. Participation by the means described in this subsection constitutes presence in person at the meeting.

(g) The affirmative votes of a majority of the members of the

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task force are required for the task force to take action on any measure, including approval of the report to the legislative council and the legislative standing committees required by subsection (j).

(h) Each member of the task force who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(i) Each member of the task force who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(j) Not later than December 1, 2009, the task force shall submit a report of its findings and recommendations to:

- (1) the legislative council;
- (2) the members of the senate standing committee that has jurisdiction over legislation concerning financial institutions; and
- (3) the members of the house of representatives standing committee that has jurisdiction over legislation concerning financial institutions.

The report to the legislative council required by this subsection must be in an electronic format under IC 5-14-6.

(k) This SECTION expires July 1, 2010.

SECTION 17. An emergency is declared for this act.

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